

**GRANT AGREEMENT
AMONG
THE MARYLAND DEPARTMENT OF TRANSPORTATION,
CSX TRANSPORTATION, INC.
AND
CSX INTERMODAL TERMINALS, INC.**

THIS GRANT AGREEMENT (this "Agreement") is entered into as of the 18th day of October, 2012, by and among the MARYLAND DEPARTMENT OF TRANSPORTATION, an agency of the State of Maryland (the "Department"), CSX TRANSPORTATION, INC. ("CSXT") and CSX INTERMODAL TERMINALS, INC. ("Intermodal", collectively with CSXT known as the "Grantee").

RECITALS

WHEREAS, the Department and CSXT entered into a Memorandum of Understanding on May 29, 2009, regarding the National Gateway and the Port of Baltimore; and

WHEREAS, the Department and the Grantee entered into an Interim Project Agreement related to the Baltimore Rail Intermodal Facility (the "Project") on September 27, 2012, attached hereto as Exhibit A (the "Interim Project Agreement");

WHEREAS, the Interim Project Agreement identified the roles and responsibilities of the Department and the Grantee related to the planning, permitting, construction and operation phases of the Project at CSXT's Mount Clare Yard in Southwest Baltimore City and established target timeframes for completing each phase; and

WHEREAS, the Maryland Secretary of Transportation is authorized, under Section 2-103(i) of the Transportation Article of the Annotated Code of Maryland, as amended ("Transportation Article"), to make grants-in-aid, to the extent provided by the budget of the State of Maryland (the "State" or the "State of Maryland"), to any person for any transportation related purpose.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The above recitals are re-affirmed and incorporated herein by reference.
2. The Department hereby grants to the Grantee up to Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "Grant"). These funds shall be available to the Grantee on a reimbursable basis for activities related to the following elements of the Project:

- Project planning and design;
- Engineering and surveying;
- Obtaining permits and other approvals and related activities;
- Traffic and noise studies; and
- Environmental studies.

The Grantee shall be responsible for funding all other costs related thereto.

The Department and Grantee agree and acknowledge that Grantee has not provided or will not provide any specific service or property to the Department in exchange for the Grant, and the Department is not a customer or potential customer of the Grantee within the meaning of Treasury Reg. §1.118-1 with respect to the Grant.

3. Payments for the Grant shall be made on a reimbursable basis by the Department to the Grantee upon the Grantee's submission of periodic invoices. The invoices shall clearly indicate the date, purpose and nature of all costs for which the Grantee is seeking reimbursement. The invoices shall be submitted no more frequently than a monthly basis to:

Mr. Bradley M. Smith
Office of Freight and Multimodalism
Maryland Department of Transportation
7201 Corporate Center Drive
P.O. Box 548
Hanover, Maryland 21076
bsmith9@mdot.state.md.us

The invoice shall be submitted to the Department no earlier than by the day after (and no later than ninety (90) days following) the day of payment by the Grantee of the expense for which the requested Grant payment shall apply.

4. The Department has obtained the requisite approvals from the General Assembly as well as all other required approvals and is authorized to provide the Grant to the Grantee in the current fiscal year in accordance with the procedures set forth in this Agreement. However, all payments hereunder by the Department to the Grantee are subject to the

budgetary and appropriation requirements of Section 3-216(d)(2) of the Transportation Article.

5. The Department shall make payment to the Grantee with respect to each invoice documenting actual costs incurred for the Project for activities set forth in Section 2 within thirty (30) days of receipt of such invoice. Documentation of activities shall include an expenditure report for the work activities being invoiced along with a short description of the work performed. Invoices shall include a statement certifying that costs contained in the invoices represent actual Project costs and that such costs have not previously been submitted for reimbursement.
6. The Grantee shall comply with all applicable Federal, State and local laws in expending Grant funds and in fulfilling its obligations under this Agreement.
7. The term of this Agreement shall commence upon signing hereof and shall terminate when all payments of the Grant, as defined in Section 3, have been made. The provisions of Sections 8, 9, 10 and 12 shall survive the term of the Agreement.
8. The Department reserves the right to suspend or terminate all or part of the financial assistance herein provided and to terminate this Agreement, in whole or in part, if the Grantee breaches any material terms of this Agreement and fails to cure that breach within 60 days after receiving written notice from the Department setting forth the acts or omissions that constitute a breach.

Effective upon the date this Agreement is terminated, the Department shall have no obligation to reimburse the Grantee for any costs incurred after such date. The Department shall be obligated to reimburse the Grantee for obligations properly incurred by the Grantee prior to the effective date of termination of this Agreement if such obligations are unable to be canceled. The payment of Grant funds by the Department, or the closing out of the Department's financial participation under this Agreement, shall not constitute a waiver of any claim that the Department may otherwise have arising out of this Agreement. If it is determined that funds that were reimbursed to the Grantee were not eligible for reimbursement under this Agreement, the Grantee shall promptly remit such amount to the Department. The Grantee's agreement to remit any excess

Grant funds to the Department shall survive the termination of this Agreement. In addition to the Department's remedies under this Section 8, the Department may proceed to protect and enforce all rights available to it, by suit in equity, action in law or by any other appropriate proceedings, any or all of which may be exercised contemporaneously with each other and all of which rights and remedies shall survive the termination of this Agreement.

9. The Grantee shall maintain separate and complete accounting records that are consistent with generally accepted accounting procedures and accurately reflect expenditures of Grant funds for the Project. The Grantee's accounting records shall be maintained for a period of three (3) years after the termination of this Agreement. The records of the Grantee must be in sufficient detail to determine the nature of the cost incurred or expenditure made by the Grantee for the Project.
10. In addition to any other rights set forth in this Agreement, the Department shall have the right at its sole cost and expense to perform final audits of the Grant provided under this Agreement. Any final audit shall commence within three years (3) years of the end of the term of this Agreement. If it is reasonably determined by the department pursuant to an audit that funds that were reimbursed to the Grantee were not eligible for reimbursement under this Agreement, the Grantee shall promptly remit such amount to the Department. The Grantee's covenant to repay any excess Grant payments shall survive the termination of this Agreement.
11. This Agreement may be modified only by written instrument, executed by the Department and the Grantee.
12. The performance of work under this Agreement may be terminated by the Department in accordance with this clause in whole, or from time to time in part, whenever the Department shall determine that such termination is in the best interest of the Department. The Department will pay all reasonable costs associated with this Agreement that Grantee has incurred up to the date of termination and all reasonable costs associated with termination of this Agreement. However, Grantee shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and

obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

13. The Grantee shall defend, indemnify, and hold harmless the Department, its officers, agents, and employees from all suits, actions, liability, or claims of liability (including reasonable attorneys' fees) that may arise in connection with the Grantee's obligations under this Agreement. The Department shall not be subject to any obligations or liabilities by contractors of the Grantee absent its written consent.
14. Grantee hereby agrees to the statement set forth below and shall cause all contracts with third party contractors (if any) to contain an equivalent statement:

No member, officer, or employee of Grantee during his or her tenure with Grantee shall have any interest, direct or indirect, in this Agreement or the proceeds thereof in pursuit of the Project.
15. No right, benefit or advantage inuring to the Grantee under this Agreement may be assigned and no burden imposed on the Grantee hereunder may be delegated or assigned without the prior written approval of the Department.
16. The parties hereby agree that this Agreement shall be construed in accordance with the law of the State of Maryland.
17. As an inducement to the Department to make the Grant, the Grantee hereby certifies to the Department that:
 - a. any resolution, or other action which may be required has been adopted, or taken as an official act of the Grantee's governing body, authorizing the execution and delivery of this Agreement by the Grantee in such manner and form as to comply with all applicable laws to make this Agreement a valid and legally binding agreement of the Grantee; and
 - b. Grantee, to its information, knowledge and belief, is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Agreement.

18. The Department and the Grantee certify that they prohibit, and covenant that they will continue to prohibit, discrimination on the basis of:

- a. age, ancestry, color, creed, marital status, national origin, race or religious or political affiliation, belief or opinion,
- b. sex or age, except when age or sex constitutes a bona fide occupational qualification; or
- c. the physical or mental disability of a qualified individual with a disability.

In the event of a dispute or claim involving discrimination, the Department and the Grantee will submit to the other party its anti-discrimination policies and procedures.

19. The Department and the Grantee shall comply, as required, with the State's policy concerning drug and alcohol free workplaces, as set forth in EXECUTIVE ORDER 01.01.1989.18 and COMAR 21.11.08, throughout the term of this Agreement.

20. It is specifically agreed between the Department and the Grantee that it is not intended by any of the provisions of this Agreement to create in any entity, third party beneficiary status in connection with the performance of the obligations herein.

21. If any provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the parties shall negotiate, in good faith, a replacement provision as close in meaning as reasonably possible to the original, but without the illegal, invalid or unenforceable provision. If the parties are unable to negotiate a replacement provision:

- a. such illegal, invalid or unenforceable provision shall be fully severable;
- b. this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and
- c. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

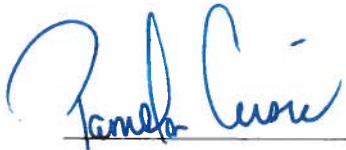
22. This Agreement may be executed in a number of identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement.

23. Response to Requests from the Maryland Commission on Civil Rights. As a condition of entering into this Agreement, upon the Maryland Commission on Civil Rights' request, and only after the filing of a complaint against the Grantee under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended, the Grantee agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that the Grantee has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the dollar amount paid by the Grantee on each subcontract or supply contract. The Grantee further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigations that are requested by the State. The Grantee understands that the violation of this clause is a material breach of this Agreement and may result in Grant termination, disqualification by the State from participating in State contracts, and other sanctions.
24. Failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy or option provided herein, will not be construed as a waiver of the right in the future to insist upon strict performance of any provision or to exercise any right, remedy or option provided herein. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the waiver is to be enforced.
25. The Grantee shall use commercially reasonable efforts to seek Minority Business Enterprise (MBE) participation for work that will be performed pursuant to Section 2 of this Agreement.
26. This Agreement shall inure to and be binding upon the parties hereto, their agents, successors and, to the extent an assignment has been approved pursuant to Section 13 of this Agreement, their assigns.

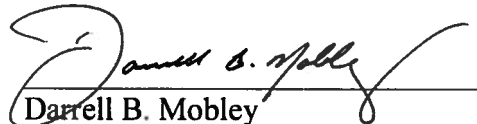
[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WITNESS:



MARYLAND DEPARTMENT OF
TRANSPORTATION




Darrell B. Mobley
Acting Secretary

WITNESS:



CSX TRANSPORTATION, INC.




Louis E. Renjel, Jr.
Vice President, Strategic Infrastructure
Initiatives

WITNESS:



CSX INTERMODAL TERMINALS, INC.




Wilby Whitt
President

FUNDING AVAILABILITY:



David Fleming, Director
Office of Finance

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Assistant Attorney General